

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on May 6, 1982.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 82-13335 Filed 5-14-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 23039; Amdt. No. 1216]

Standard Instrument Approach Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, may be ordered from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price is \$135.00.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures and Airspace Branch (AFO-730), Aircraft Programs Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and 14 CFR 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance

dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Index

List of Subjects in 14 CFR Part 97

Aviation safety, Standard instrument approaches.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

* * * Effective July 8, 1982

Martha's Vineyard, MA—Martha's Vineyard, VOR Rwy 6, Amdt. 3
Martha's Vineyard, MA—Martha's Vineyard, VOR Rwy 24, Amdt. 10
Bedford, PA—Bedford, VOR/DME-A, Original
Shamokin, PA—Northumberland County, VOR Rwy 8, Amdt. 1

* * * Effective June 24, 1982

Pompano Beach, FL—Pompano Beach Airport, VOR Rwy 14, Amdt. 6
West Palm Beach, FL—Palm Beach International, VOR Rwy 9L, Amdt. 11
Urbana, IL—Illini, VOR-A, Amdt. 10
Urbana, IL—Illini, VOR/DME-B, Amdt. 4
Liberal, KS—Liberal Muni, VOR Rwy 3, Amdt. 1

Liberal, KS—Liberal Muni, VOR Rwy 17, Amdt. 6
 Liberal, KS—Liberal Muni, VOR/DME Rwy 17, Amdt. 2
 Liberal, KS—Liberal Muni, VOR Rwy 35, Amdt. 10
 Liberal, KS—Liberal Muni, VOR/DME Rwy 35, Amdt. 2
 Hawesville, KY—Hancock Airfield, VOR Rwy 15, Amdt. 2
 Ann Arbor, MI—Ann Arbor Muni, VOR Rwy 6, Amdt. 10
 Ann Arbor, MI—Ann Arbor Muni, VOR Rwy 24, Amdt. 9
 Three Rivers, MI—Three Rivers Municipal-Dr. Haines, VOR-A, Amdt. 6
 Laurel, MS—Hesler-Noble Field, VOR Rwy 13, Amdt. 11
 Rutherfordton, NC—Rutherford County, VOR Rwy 36, Amdt. 1
 Lancaster, OH—Fairfield County, VOR-A, Amdt. 3
 Wilmington, OH—Airborne Airpark, VOR Rwy 4, Amdt. 1
 Wilmington, OH—Airborne Airpark, VOR Rwy 22, Amdt. 1
 Wilmington, OH—Airborne Airpark, VOR/DME Rwy 22, Amdt. 1

* * * Effective May 4, 1982

St. Louis, MO—Weiss, VOR-A, Amdt. 2

* * * Effective April 27, 1982

Pawtucket, RI—North Central State, VOR-A, Amdt. 4

Pawtucket, RI—North Central State, VOR-B, Amdt. 2

2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

* * * Effective June 24, 1982

Waycross, GA—Waycross-Ware County, LOC Rwy 18, Original.

Lancaster, OH—Fairfield County, SDF Rwy 28, Amdt. 1

Oklahoma City, OK—Will Rogers World, LOC BC Rwy 35L, Amdt. 8

* * * Effective June 10, 1982

Joplin, MO—Joplin Muni, LOC BC Rwy 31, Amdt. 17

Charlotte, NC—Douglas Muni, LOC Rwy 36R, Original

* * * Effective April 27, 1982

Pawtucket, RI—North Central State, LOC Rwy 5, Amdt. 2

3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

* * * Effective July 8, 1982

Vinton, IA—Vinton Veterans Meml Arpk, NDB Rwy 16, Original

Gardner, KS—Gardner Muni, NDB-D, Original

Sturgis, MI—Kirsch Muni, NDB Rwy 18, Amdt. 2

Sturgis, MI—Kirsch Muni, NDB Rwy 24, Amdt. 6

Windom, MN—Windom Muni, NDB Rwy 17, Amdt. 4

Lehigh, PA—Jake Arner Memorial, NDB Rwy 8, Original

Lehigh, PA—Jake Arner Memorial, NDB Rwy 26, Amdt. 1

* * * Effective June 24, 1982

Ft. Lauderdale, FL—Ft. Lauderdale Executive, NDB Rwy 8, Amdt. 5

Ft. Lauderdale, FL—Ft. Lauderdale-

Hollywood Intl, NDB Rwy 13, Amdt. 13

Panama City, FL—Panama City-Bay County, NDB Rwy 14, Amdt. 2

French Lick, IN—French Lick Muni, NDB Rwy 26, Amdt. 5

Liberal, KS—Liberal Muni, NDB Rwy 35, Amdt. 2

Three Rivers, MI—Three Rivers Municipal-Dr. Haines, NDB Rwy 27, Amdt. 4

Laurel, MS—Hesler-Noble Field, NDB Rwy 13, Amdt. 4

Rutherfordton, NC—Rutherford County, NDB Rwy 36, Amdt. 2

Lancaster, OH—Fairfield County, NDB Rwy 28, Amdt. 1

Middletown, OH—Hook Field Muni, NDB Rwy 23, Amdt. 6

Oklahoma City, OK—Will Rogers World, NDB Rwy 35L, Amdt. 2

Big Lake, TX—Reagan County, NDB Rwy 16, Original

* * * Effective June 10, 1982

Joplin, MO—Joplin Muni, NDB Rwy 13, Amdt. 22

* * * Effective April 30, 1982

Madison, WI—Dane County Regional/Truax Field, NDB Rwy 36, Amdt. 24

Milwaukee, WI—General Mitchell Field, NDB Rwy 7R, Amdt. 8

4. By amending § 97.29 ILS-MLS SIAPs identified as follows:

* * * Effective July 8, 1982

Martha's Vineyard, MA—Martha's Vineyard, ILS Rwy 24, Amdt. 6

Williamsport, PA—Williamsport-Lycoming County, ILS Rwy 27, Amdt. 13

* * * Effective June 24, 1982

Ft. Lauderdale, FL—Ft. Lauderdale Executive, ILS Rwy 8, Amdt. 1

Ft. Lauderdale, FL—Ft. Lauderdale-

Hollywood Intl, ILS Rwy 9L, Amdt. 11

Panama City, FL—Panama City-Bay County, ILS Rwy 14, Amdt. 12

West Palm Beach, FL—Palm Beach

International, ILS Rwy 9L, Amdt. 19

Liberal, KS—Liberal Muni, ILS Rwy 35, Amdt. 2

Fargo, ND—Hector Field, ILS Rwy 35, Amdt. 28

Oklahoma City, OK—Will Rogers World, ILS Rwy 35R, Amdt. 5

Seattle, WA—Seattle-Tacoma Intl, ILS Rwy 16R, Amdt. 7

* * * Effective June 10, 1982

Portland, ME—Portland Intl Jetport, ILS Rwy 29, Amdt. 1

Joplin, MO—Joplin Muni, ILS Rwy 13, Amdt. 20

* * * Effective April 30, 1982

Milwaukee, WI—General Mitchell Field, ILS Rwy 7R, Amdt. 11

Milwaukee, WI—General Mitchell Field, ILS Rwy 19R, Amdt. 6

5. By amending § 97.31 RADAR SIAPs identified as follows:

* * * Effective July 8, 1982

Philadelphia, PA—Philadelphia Intl, RADAR-1, Amdt. 15

* * * Effective June 24, 1982

Greer, SC—Greenville-Spartanburg, RADAR-1, Amdt. 4

6. By amending § 97.33 RNAV SIAPs identified as follows:

* * * Effective June 24, 1982

Gainesville, GA—Lee Gilmer Memorial, RNAV Rwy 4, Original, cancelled

LaPorte, IN—LaPorte Muni, RNAV Rwy 20, Original

Liberal, KS—Liberal Muni, RNAV Rwy 12, Amdt. 3

Ann Arbor, MI—Ann Arbor Muni, RNAV Rwy 24, Amdt. 2

Cadillac, MI—Wexford County, RNAV Rwy 7, Amdt. 2

Lancaster, OH—Fairfield County, RNAV Rwy 10, Amdt. 2

Greer, SC—Greenville-Spartanburg, RNAV Rwy 21, Amdt. 3

* * * Effective June 10, 1982

Joplin, MO—Joplin Muni, RNAV Rwy 31, Amdt. 4

* * * Effective April 27, 1982

Pawtucket, RI—North Central State, RNAV Rwy 5, Amdt. 4

Pawtucket, RI—North Central State, RNAV Rwy 23, Amdt. 3

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. §§ 1348, 1354(a), 1421, and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)); and 14 CFR 11.49(b)(3).)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. The FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C. on May 7, 1982.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1981.

John M. Howard,
 Acting Chief, Aircraft Programs Division.

[FR Doc 82-13232 Filed 5-14-82; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

15 CFR Part 923, 927, 928, and 931

Improving Coastal Management in the United States

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of final rulemaking.

SUMMARY: Pub. L. 96-464, the Coastal Zone Management Improvement Act of 1980 (the Act), which amended the Coastal Zone Management Act of 1972 (CZMA), requires the Secretary of Commerce to issue regulations for improving the administration of the national coastal zone management program established by the CZMA. This notice sets out final rules for: (1) Encouraging states to achieve significant improvements in meeting certain national coastal management objectives; (2) allocating Federal financial assistance among eligible states to administer approved state coastal management programs; (3) awarding Federal financial assistance to eligible states to mitigate adverse coastal impacts caused by coal and alternative ocean energy activities; and (4) reviewing and evaluating the performance of approved state coastal zone management programs and coastal energy impact programs.

EFFECTIVE DATE: The final rules will become effective unless, within 60 calendar days of continuous session after submission to the Congress for review, both Houses of Congress adopt a concurrent resolution disapproving the final rules. Notification of the effective date will be published in the *Federal Register*. Until these regulations become effective, they shall provide guidance to federal agencies and state governments for implementing the CZMA.

FOR FURTHER INFORMATION CONTACT: JoAnn Chandler, Director, Vickie Allin or Nancy Carter, Office of Policy, Evaluation and External Relations (202) 634-4245.

SUPPLEMENTARY INFORMATION:

I. Authority

This notice of final rulemaking is issued under authority of Sections 306 and 317 of the CZMA and Sections 5, 7, and 9 of the Act.

II. Regulatory Issues

A. General Background

The CZMA was enacted to encourage and assist states in developing and implementing management programs to preserve, protect, develop, and when possible, to restore or enhance the resources of our nation's coast. The primary purpose of the 1980 amendments is to reaffirm the nation's commitment to the wise use and management of our coastal resources through the coastal zone management program. To this end, key provisions of the CZMA were strengthened to encourage states to significantly improve their coastal management programs.

On December 30, 1980, NOAA issued an advance notice of proposed rulemaking (ANPR) to solicit public comment on rules to implement the amendments to the CZMA. Specifically, the ANPR solicited comments on rules for: (1) Encouraging states to achieve significant improvements in meeting certain national coastal management objectives (Sections 303 and 306(a)); (2) Allocating Federal financial assistance among eligible states to administer approved state coastal management programs (Section 306(b)); (3) awarding Federal financial assistance to eligible states to mitigate adverse coastal impacts caused by coal and alternative ocean energy activities (Section 306(c)(3)); (4) reviewing and evaluating the performance of approved state coastal zone management programs and coastal energy impact programs (Section 312); (5) enhancing the protection of nationally significant coastal resources (Section 306(i)); (6) awarding grants to eligible coastal states for preserving specific coastal areas, redeveloping urban waterfronts and ports, and providing access to public beaches and coastal waters (Section 306A); and, (7) awarding grants to assist eligible states in preserving islands (Section 315). NOAA received 38 comments before the close of the comment period on January 31, 1981. In February 1981, NOAA distributed issue papers to approximately 400 interested parties on a mailing list established for this rulemaking. Sixty-six comments were received.

Based on comments on the ANPR and the issue papers, NOAA prepared proposed rules. Because of budgetary constraints and the need to eliminate unnecessary regulations, only those regulations that were statutorily mandated and necessary to the operation of the coastal management programs were proposed. Therefore, the NPR did not include regulations

implementing Sections 306(i), 306A and 315.

A Notice of Proposed Rulemaking was published on pages 51393-51402 of the *Federal Register* of October 20, 1981, inviting comments for 30 days ending November 20, 1981. Comments were received from 32 sources including federal and state government agencies, regional organizations and interest groups.

B. Legislative Amendments and Issues Resolved Through Rulemaking

1. Improving Coastal Zone Management—Sections 303/306. The provisions of the CZMA paraphrased below relate to improving coastal management, and Section 5(b) of the Act requires the Secretary to issue regulations for their implementation.

Section 303 clarifies national coastal policy by describing specific national objectives that warrant full consideration during the implementation of approved state coastal management programs.

Section 306(a) encourages more effective coastal management by requiring states with approved programs to expend an increasing proportion of administrative grants (up to a maximum of 30 percent unless a state agrees to a higher percentage) on activities that will result in significant improvement in achieving the national coastal objectives specified in Section 303.

The final rules implementing sections 303 and 306(a) broadly define "significant improvements" to include state accomplishments that add elements to current management programs or strengthen existing program elements. They provide that selection of management activities designed to result in significant improvements will be negotiated between OCZM and individual states, require states to expend in the second year of funding at least 20 percent of their Federal section 306 financial assistance award on significant improvement activities and increase expenditures by one percent in each succeeding year. They also provide that a state failing to agree to pursue significant improvements may not receive any financial assistance under Section 306 to implement its program.

Generally, the final significant improvement regulations provide for a flexible and cooperative approach so that coastal states and NOAA can effectively deal with the phase down of Federal funding. These final regulations are published as Subpart K of 15 CFR Part 923—the existing Coastal Zone Management Program Development and Approval Regulations.

2. *Allocating Administrative Grants—Section 306(b).* Section 306(b) requires that administrative grants under section 306 be allocated among coastal states with approved programs in accordance with rules and regulations that take into account "the extent" of the shoreline covered by the plan, "the population" of the area covered by the plan, and other relevant factors.

The allocation formula in the final regulations is simple, straightforward, and easy to administer and will minimize the disruption in state funding from current levels. The formula is based on (1) an established minimum share allocated to each state and (2) a proportionate share of the remainder to be allocated 60 percent on the length of shoreline, which provides a reasonable approximation of the magnitude of the resource to be managed, and 40 percent on coastal county population which provides a reasonable approximation of the pressures for use of coastal resources. These factors provide continuity with past practice, since they have been used in the allocation process since the inception of the program and will produce the least disruption to the existing funding pattern. Other factors such as nature of the shoreline and need for management funds were considered but not selected because they were too subjective and difficult to quantify. The final allocation regulations supersede the expired allocation regulations published at 15 CFR Part 927.

3. *Coal and Alternative Ocean Energy Impact Grants—Section 308(c)(3).* New section 308(c)(3) authorizes the Secretary to make grants under the Coastal Energy Impact Program (CEIP) to eligible coastal states for preventing or mitigating unavoidable environmental and recreational losses in the coastal zone resulting from the "transportation, transfer or storage of coal or from alternative ocean energy activities." Funds must be allocated among eligible states in accordance with "rules and regulations * * * which shall take into account the number of coal or alternative ocean energy facilities, the nature of their impacts, and other relevant factors * * *" (Section 308(c)(3)(B)).

The final regulations implementing section 308(c)(3) have been combined with existing regulations implementing sections 308(c)(1) and (2) and revise Subpart D (Planning for the Consequences of Energy Facilities) and Subpart L (OCS State Participation Grants) of 15 CFR Part 931—the Coastal Energy Impact Program regulations. The final regulations, therefore, govern the award of all grants under section 308(c).

Consolidation of the three categories of "c" grants under one subpart (new subpart D) will greatly simplify the regulations for administering the CEIP.

Under this consolidated approach, states will receive one allotment under section 308(c) that they will then apportion at their discretion among the allowable uses of subsections (c)(1), (c)(2), and (c)(3). To assure the timely expenditure of section 308(c) funds, the final regulations require states to submit applications before the end of the fiscal year for which allotments were made; funds not applied for by then can be reallocated among other eligible states during the next fiscal year.

The final regulations also set forth the objectives of providing financial assistance to coastal states under section 308(c) and its allowable uses, describe procedures for allotting section 308(c) funds among eligible coastal states and for applying for assistance under section 308(c). In addition, the final rules broadly define coal to include the waste products of its combustion (ash and sludge), "coal facility" as any facility that utilizes, transports, transfers, stores, handles, processes or produces coal, and "alternative ocean energy facility" to include solar facilities.

The final rules consolidating the financial assistance provisions under section 308(c) are published as Subpart D of 15 CFR Part 931—the Coastal Energy Impact Program regulations—and replace the existing Subpart D and Subpart L.

The consolidation of section 308(c) regulations necessitates some minor conforming changes to Subpart G, which deals with formula grants. These changes are necessary because Subpart D, which is being revised, contained provisions that are required for administering the formula grants provisions of the CEIP regulations.

4. *Review of Performance (Evaluation)—Section 312.* Section 312 of the CZMA requires a "continuing review of the performance of coastal states with respect to coastal management" and Section 9(b) of the Act requires the promulgation of rules to implement section 312. This review must include a written evaluation that assesses the extent to which the state has: (1) Implemented and enforced its approved program; (2) addressed the coastal management needs identified in Section 303(2)(A)-(I) of the CZMA; and (3) adhered to the terms of any grant, loan or cooperative agreement funded under the CZMA. Section 312 further requires that a public meeting be conducted as part of each evaluation

and that opportunity be provided for oral and written comment by the public. Evaluation reports must be issued following each review of state performance. The Secretary is directed to reduce financial assistance under Section 306 of the CZMA by up to 30 percent if it is determined that a state is not making significant improvement in achieving the coastal management objectives identified in section 303(2)(A)-(I), and to withdraw program approval and financial assistance if it is found that a state is failing to adhere to, or is unjustifiably deviating from, its approved program or the terms of any grant or cooperative agreement and refuses to remedy the deviation. The statute outlines procedural safeguards (such as notice to the state and an opportunity for a public hearing) that must be observed if the Secretary finds that program approval and financial assistance should be withdrawn.

The basic requirements for continuing review are set forth in the regulations. They provide that evaluations will be conducted in the course of continuing reviews and that written findings will be prepared. The Office of Coastal Zone Management expects that the evaluation of a state's approved coastal zone management program and coastal energy impact program will occur at the same time.

The final evaluation regulations are published as 15 CFR Part 928, replacing the regulations that governed a one-time-only allocation of supplemental funds appropriated for FY 1975. These regulations are no longer necessary for program administration.

The promulgation of regulations implementing section 312 (c), (d) and (e) necessitates some minor changes to 15 CFR 923.82(b)(3), which deals with sanctions for state implementation of unapproved amendments. The changes are necessary because this section references § 923.85, "Termination and Withdrawal of Administrative Funding," which is being replaced by § 928.5(b), "Withdrawal of Program Approval and Financial Assistance."

III. Summary of Significant Comments on NPR and NOAA's Responses

NOAA received comments from 32 sources on the composite rulemaking for Parts 923, 927, 928 and 931. Commentators included: 1 Federal agency (the U.S. Department of the Interior) 19 coastal states and territories (South Carolina, New Hampshire, New York, Maryland, Michigan, California, Alaska, Louisiana, Oregon, Alabama, Massachusetts, Pennsylvania, Ohio, Florida, Wisconsin, New Jersey,

Connecticut, Government of the Virgin Islands, and the Commonwealth of Puerto Rico); 8 interest groups (Conoco, Inc., Sierra Club, International Association of Drilling Contractors, Coastal States Organization, Texas Eastern Transmission Corp., Edison Electric Institute, Natural Resources Defense Council, and the United Mobile Sportsfisherman, Inc.); and one member of the Coastal Zone Management Advisory Committee. Not all commentators submitted comments on all sections of the regulations. All comments received are on file at the Office of Coastal Zone Management and are available at that office for review upon request. Each of the major issues raised by commentators has been summarized and NOAA's responses provided under the relevant subheading in this section.

A. Part 923, Subpart K—Improving Coastal Zone Management

General. (1) Rather than promulgating regulations, NOAA should concentrate on developing effective phase-down policy. Publication of regulations should be delayed until various proposals for continued funding of coastal management activities are considered.

Response: NOAA is promulgating only those regulations that are statutorily mandated and necessary to the operation of the national coastal management program. Therefore, regulations implementing sections 306(i), 306A, and 315 were not proposed. In addition, the process of promulgating these final rules provided a forum for discussing in detail phase-down issues. The promulgation of these final rules has, therefore, contributed to the development of flexible and effective phase-down policies, which are embodied in these regulations.

(2) NOAA must recognize that achievement of significant improvements are often beyond the control of the coastal management agency. State agencies should not be penalized because, for example, the state legislature failed to enact a statute. State agencies should be judged only on whether they have taken reasonable steps to achieve a significant improvement.

Response: NOAA does not agree that the achievement of significant improvements should be based solely on the performance of the management agency. The national coastal management program is designed to encourage "states" not coastal agencies to exercise their management authorities over coastal resources. The ultimate goal of the significant improvement provisions is to encourage states to

adopt and effectively implement better coastal management policies and procedures. However, not all significant improvements are dependent on approval by forces outside the coastal agency's control. For example, streamlining internal administrative procedures that decrease permit processing time could qualify as a significant improvement. In addition, NOAA may give significant improvement credit on a case-by-case basis for tasks aimed at achieving an improvement that is successfully carried out by the coastal agency even if the complete achievement of the improvement proves to be beyond the control of the coastal agency.

§ 923.102 Significant improvement defined.

(1) Section 923.102(b)(3) appears to encourage states to expand into new geographic areas beyond their defined coastal zones. It is improper to require states to expand their coastal programs beyond boundaries approved by the Secretary of Commerce and imprudent in light of reduced funding levels for management activities.

Response: NOAA does not require or intend to encourage states to expand their coastal zones beyond the boundaries approved by the Secretary of Commerce. However if the state chooses to expand its coastal zone and extend its enforceable program authorities to the expanded area, in response to changed circumstances, the expansion could qualify as a significant improvement. As proposed, § 923.102(b)(3) also applies to geographic areas located entirely within the existing coastal zone, e.g., the incremental expansion of an enforceable policy into a new geographic area within the coastal zone. Therefore NOAA will leave that provision intact since it allows for the expansion of the coastal boundary but does not require it.

(2) Significant improvement should be defined as an activity that makes a "measurable or clearly perceptible improvement in the achievement of any of the national interest objectives in section 303(2)(A)-(I)." Such activities should include the following provided they clearly serve the national interest objectives:

Development of natural resource information critical to making informed coastal management decisions;

Development and implementation of state and local strategies; projects, and management programs for coastal resources and uses;

Legal work to clarify or protect the public interest in coastal resources.

Response: The suggested definition provides no baseline from which significant improvements are measured. NOAA has determined that Congress intended states to improve their "approved" programs. Improvements, if they are to be "significant," must go beyond what is expected of an approved program. NOAA will include the first and second suggested example in its list of significant improvements with the qualification that these activities must exceed what is expected of the approved program. The third example is not accepted because it constitutes a basic function of an approved management program.

(3) Section 923.102(b) (1) and (2) should be amended to delete the words "beyond what is required by the approved program" from the definition of significant improvement.

Response: NOAA disagrees. The suggested deletion would remove an essential characteristic of a significant improvement—i.e., that it exceed what is required of an approved management program.

(4) The definition of significant improvement should not be restricted to program amendments or routine program implementation.

Response: Significant improvements are not limited to programs amendments and routine program implementation. Other accomplishments that meet the criteria of § 923.102(a) may also qualify as significant improvements.

(5) The definition of significant improvement encourages states to expand authorities rather than improving existing program elements at a time when Federal financial assistance is being phased out.

Response: The definition of significant improvement allows both the expansion of program scope and the improvement of existing program elements. Therefore, the definition is sufficiently broad to allow states the flexibility to pursue significant improvements that best meet their needs.

(6) In § 923.102(b) delete the word "significant" because the list of examples in that section constitutes accomplishments whose significance must still be determined by testing whether they substantially expand the scope of the program or substantially strengthen the ability of the state to implement or enforce the approved program.

Response: NOAA disagrees. The suggested change would serve to make the definition of significant improvement too vague—i.e., it would leave the decision as to what constituted a significant improvement entirely to the

discretion of the Assistant Administrator. NOAA has clarified the concept of significant improvement by providing specific examples of accomplishments that fit the definition.

(7) The regulations should provide greater detail on what constitutes the national interest as defined in section 303(2)(A)-(I).

Response: Section 303(2)(A)-(I) provides a very broad statement of the national goals that states with approved management programs should be pursuing. Specifying requirements for the national interest under each of the nine national goals in detailed regulations would be difficult because approved programs and conditions vary from state to state. The generic examples of significant improvements provided should give sufficient guidance to NOAA and the states to negotiate significant improvement activities that meet both national and state needs.

(8) Significant improvement should be defined to include "the adoption of a schedule for consultation and coordination with and the giving of adequate consideration to the views of affected federal agencies."

Response: NOAA may accept as a significant improvement any accomplishment aimed at the goal of improving inter-government coordination if it meets the requirements of § 931.102. However, the suggested language is not accepted because it does not specify with sufficient clarity what is required.

(9) There are no specific standards to determine whether a state has achieved a significant improvement. Significant improvement is defined merely as compliance with the existing state program.

Response: Significant improvements and activities leading to significant improvements are broadly defined to allow NOAA and the states considerable flexibility to address a variety of issues in the face of reduced Federal assistance. However, states must describe in detail the activities and expected products associated with each significant improvement before the Assistant Administrator will approve them. Since all significant improvement activities must be aimed at substantially expanding or strengthening the approved program, the statement that merely implementing the program will result in significant improvements is not accurate.

(10) Significant improvement should include adoption of plan amendments such as those applying to the San Francisco Bay Plan.

Response: The adoption of plan amendments, such as those applying to

the San Francisco Bay Plan, will be considered significant improvements if they meet the requirements of § 923.102.

(11) Is "approved program" in § 923.102(a) the same as "approved management program" in § 923.2(d).

Response: Yes. The terms "approved program" and "approved management program" are interchangeable.

§ 923.103 Selection and approval of activities leading to significant improvements.

(1) The proposed regulations subject states to specific deadlines and schedules without imposing similar requirements on OCZM. Therefore § 923.103(d) should be amended by adding the requirement that "the Assistant Administrator will provide the State agency with a schedule for negotiation and a time certain when a decision will be available to the State agency."

Response: NOAA agrees and has amended § 923.103 accordingly.

(2) The regulations should clearly state that significant improvements may take more than one financial assistance award period. Therefore § 923.103(e) should be amended by deleting "if there is a specific reason to identify a longer period."

Response: It is NOAA's policy to encourage the achievement of significant improvements within the period of one financial assistance award because of the potential for rapid phase out of Federal financial assistance. However, the regulations permit significant improvements to be reached over a period greater than one financial assistance award if there is a need for a longer period of time. NOAA has determined that deleting the "specific reason" language would lessen the likelihood that specific improvements in coastal program operations are achieved with currently available Federal funds. However, once a significant improvement is achieved it becomes the responsibility of the State to fund the continued operation of that improvement out of program administration funds.

(3) The process for negotiating significant improvement activities between NOAA and the state should provide for participation by the public, Federal agencies, and other interested parties.

Response: The evaluation of approved programs under Section 312 provides opportunities for public involvement. This evaluation will be used by NOAA to identify program needs that could be addressed with significant improvement funds. Therefore, public participation during the evaluation process will have

a direct bearing on the significant improvement negotiations. However, public participation does not extend to grant negotiations between the grantor and grantee.

(4) States should not be allowed to make significant improvements in only one national interest area.

Response: NOAA will negotiate significant improvement activities with the state on a case-by-case basis. There may be occasions when both NOAA and the state agree that one area merits the application of all of the state's significant improvement funds. Therefore NOAA will not arbitrarily limit the negotiation process.

(5) The regulations provide no indication that state priorities will be considered when significant improvement activities are negotiated. The regulations should provide that state identified needs will serve as the basis for negotiation. Therefore the words "based on the results of the continuing review described in 15 CFR Part 928" should be replaced with "In consultation with the state."

Response: It is NOAA's intent that states take the initiative in identifying significant improvement activities. The selection of these activities will depend on the nature of the individual programs and the particular circumstances in each state. NOAA will base its negotiating position in large measure on the Section 312 evaluation. Although the selection of activities will be negotiated, NOAA has the ultimate responsibility to assure that Federal funds are being used effectively and in accordance with the objectives of the CZMA. However, NOAA is amending § 923.103(a) to stress that the states should take the initiative in identifying significant improvement activities and § 923.103(b) to emphasize that significant improvement activities will be determined "in consultation with the state."

(6) Add the words "agreement included in" before the words "financial assistance award" in the last sentence of § 923.103(d).

Response: This editorial correction is made.

§ 923.104 Establishing the increasing proportion.

(1) The 1% annual increase in expenditures required by § 923.104 for significant improvements is too small. At this rate the maximum of 30% may never be reached by many states. The annual increase should be set at 5% or discretion given the Assistant Administrator to require bigger increases on the basis of deficiencies found during program evaluation.

Response: NOAA is requiring each state to expend a minimum of 20% of its financial assistance award on significant improvement activities during the first year it is required to pursue significant improvements. In light of this large initial expenditure and reduced funding levels, NOAA has determined that a 1 percent annual increase is a realistic requirement that will balance the need to devote an increasing share of federal funds to the improvement of coastal programs with the need to allow states to institutionalize existing program elements.

(2) States that choose to devote more than the required amount for significant improvements should be rewarded by priority access to unused funds or points in the allotment system.

Response: The formula for determining significant improvement expenditures is equitable and simple to administer. Therefore NOAA is reluctant to establish a system that would be difficult to administer and could lead to conflicts among the states.

(3) The regulations should make it clear that "increasing proportion" refers to the amount of the financial assistance actually received by a state.

Response: NOAA agrees and has clarified § 923.104 to emphasize that the amount that must be spent on significant improvements is obtained by multiplying the applicable percentage by the amount of Federal funds actually received.

§ 923.105 Failure to agree to pursue significant improvements.

(1) The failure to pursue significant improvements should not result in a loss of all section 306 funding as required by § 923.105(a) because this requirement can be easily circumvented. States can "pretend" to pursue significant improvements to get full funding since failure to achieve a significant improvement will result in a reduction or withdrawal of at most 30% of the state's 306 funds. Therefore, it would be simpler to allow states to declare their intentions before receiving their grant.

Response: Section 306(a)(3) prohibits the Assistant Administrator from awarding a Section 306 grant unless the recipient state agrees to pursue significant improvements. Therefore, NOAA is statutorily precluded from awarding financial assistance to states that choose not to pursue significant improvements. In addition, NOAA does not accept the assumption that states will "pretend" to be working toward significant improvements merely as a ploy to receive full funding under Section 306.

(2) The withdrawal of all Section 306 funds for failure to pursue significant improvements will impair the operation of state coastal management programs but will not necessarily result in withdrawal of program approval. As a result the review for consistency of needed energy development projects may be delayed. Therefore, energy projects should be exempted from consistency review as soon as funding is withdrawn for failure to pursue significant improvements.

Response: The CZMA does not authorize exempting energy projects from consistency review when a state refuses to pursue significant improvements. Consistency requirements cease to apply only when program approval is withdrawn because a state has refused to remedy a failure to adhere to its approved management program or the terms of its Section 306 financial assistance award. Upon the withdrawal of all Section 306 funds for failure to pursue significant improvements NOAA will closely monitor state program performance to determine whether withdrawal of approval is necessary.

B. Part 927 - Allocating Administrative Grants—Section 306(b)

(1) The regulations should establish a 1% minimum and a 10-15% maximum financial assistance award level for any state.

Response: CZMA program funding levels and eligible funding recipients are factors which may vary from year to year. Although Congress has established a 1% minimum financial assistance award level, which is reflected in these regulations, no maximum award level is established.

The Assistant Administrator can adjust the maximum and minimum percentages in the allocation formula to meet the basic funding needs of eligible states (commensurate with the total available funding for the program) in implementing effectively CZMA requirements. The need for flexibility in establishing award level is accentuated as appropriations and funding levels decrease in the phase down of Federal funding.

(2) A state failing to make "significant improvements" should be subject to a 0.7 percent minimum rather than a one percent minimum.

Response: NOAA recognizes that at times implementation of the statutory requirements of section 312(c), when a state fails to meet "significant improvement" requirements, might necessitate reducing the base allocation, and that these reductions might result in an award falling below the 1% minimum

specified in section 306(b) of the Act. In cases where such statutory conflicts arise award levels may fall below the 1% minimum, as prescribed in the actual calculation of the financial assistance award level under § 927.1(f).

(3) The term "tidal shoreline mileage" should be clearly defined and the National Ocean Survey (NOS) methodology for measuring tidal shoreline mileage should be explained.

Response: NOAA uses the NOS definition and mileage figures for marine and island coastal states and territories and presently accepts the shoreline mileage figures measured by the International Coordinating Committee on Great Lakes Basic Hydraulic and Hydrologic Data for states bordering on the Great Lakes. For marine and island states and territories, tidal shoreline is defined as the shoreline of outer coast, offshore islands, sounds, bays, rivers and creeks to the head of tidewater or to a point where tidal waters narrow to a width of 100 feet. The measurements are made using a recording instrument on the largest-scale charts available. The NOS methodology varies slightly from that used by the International Coordinating Committee on Great Lakes Basic Hydraulic and Hydrologic Data, and NOAA is reviewing this inconsistency as raised in comments on the NPR.

For clarification NOAA is adding language to the final rule to more precisely explain shoreline mileage calculations.

Section 927.1(c)(2)(i) now reads "Sixty percent will be allocated based on each eligible state's proportionate share of the length of tidal shoreline mileage and/or Great Lake shoreline mileage of all participating states based on the most recently available, official data from or accepted by the National Ocean Survey * * *"

(4) Factors other than shoreline and population should be considered in the calculation of allocations, such as areas protected or held in trust, shoreline features, rate of population change, and economic significance of the coastal area.

Response: In developing both the issue paper and proposed regulations, NOAA examined the inclusion of other factors (including those above) in the allocation formula. These factors were not selected because they are too subjective and difficult to quantify. The inclusion of coastal county population and shoreline mileage does provide a reasonable approximation of the magnitude and the pressures for use of coastal resources as objective, quantifiable factors. The exclusive use

of these factors provides continuity with past NOAA practice, proposes an allocation formula which is simple and easy to administer, and results in the least disruption in state funding levels.

C. Part 931 Subpart L—Coastal Energy Impact Grants—General

(1) The relationship of new subpart D to existing subparts D and L should be clarified.

Response: New subpart D contains guidance and requirements applicable to planning grants found in existing subpart D and guidance and requirements applicable to OCS state participation grants found in existing subpart L. The consolidation is intended to simplify the regulations by eliminating duplicative and unnecessary text. The consolidation is not intended to change the substantive requirements of the planning or OCS participation programs. In addition new subpart L includes guidance and requirements applicable to coal and Alternative Ocean Energy (AOE) activity impact mitigation funds. When new subpart D becomes final and effective, it will supersede existing subparts D and L of 15 CFR part 931. The requirements and guidance with respect to objectives and allowable uses of planning grants funded under Section 308(b)(5)(B) that were in existing subpart D have been transferred to subpart G of 15 CFR Part 931. This transfer was made solely to enable existing subpart D to be superseded in its entirety. The substantive requirements applicable to planning grants funded under section 308(b)(5)(B) are not affected.

(2) Some states have two separate agencies administering the existing provisions of section 308. For example, one state agency may administer impact mitigation assistance under sections 308(c)(1), (b) and (d) while another state agency administers OCS state participation assistance under section 308(c)(2). Under the existing regulations this arrangement did not present any administrative problems because there was a specific allotment of funds under each subsection. Under the proposed regulations it is not clear who will administer the consolidated grant program and allocate available funds among eligible uses. Guidelines should therefore be established to require the expenditure of fixed minimum percentages for eligible uses. In addition, a single agency should be designated to administer the consolidated 308(c) program.

Response: NOAA has determined that the state should decide how to allocate available section 308(c) funds among allowable uses. NOAA assumes that the

state agency designated under § 931.25(a)(4)(i) to administer the CEIP will submit the state's section 308(c) application and that allocation questions will be decided within the state by responsible program officials, including where necessary, the Governor.

(3) The OCS State Participation Grants Program should not be consolidated with other provisions of section 308 because this is a special purpose program whose effectiveness could be diluted by merger.

Response: The various financial assistance programs under section 308(c) are being consolidated to simplify program administration and improve program flexibility. The consolidation should not detrimentally affect the OCS State Participation program because no changes are being made in the substantive provisions of that program. The only change that could affect this program is that the state will decide how much of the total available under section 308(c) will be spent on OCS state participation purposes. Since the Congress has not appropriated specific amounts for each of the allowable uses, NOAA believes it is appropriate for the state to decide how to apportion its funds among allowable uses.

§ 931.37 Limitations on expenditures.

(1) Increasing the matching share to 30 per cent is unfair because the most needy local governments will not be able to benefit from Federal assistance. The Assistant Administrator should be given discretion to vary the matching share as a means of increasing management flexibility.

Response: A matching share of 30 per cent is consistent with NOAA's policy of phasing down CEIP assistance in an orderly manner. Since the funding available for CEIP purposes is limited, increasing the matching share will, in effect, increase the total amount available for impact mitigation. In addition, an increased matching share will encourage the funding of projects with the highest priority.

(2) The significance of the October 17, 1980 date in § 931.37(c)(3)(i) should be clarified.

Response: Section 931.37(c) prohibits the use of section 308(c) funds for mitigating environmental or recreational losses that (1) result from the sale, lease, or rental by a state or local government of property to another party, or (2) that could have been prevented by a reasonable exercise of a state's existing regulatory authority, if the sale, lease, rental or loss occurs after October 17, 1980—the date that section 308(c)(3) was signed into law. This limit on the

eligibility is instituted to prevent the funding of projects for mitigating losses that could readily have been avoided by reasonable state or local action. The October 17, 1980, date allows "grandfathering" state and local actions that occurred before enactment of the 1980 amendments to the CZMA.

(3) To assure that Section 308(c) funds are used to encourage necessary energy development, the following limitation on 308(c) expenditures should be added to § 931.37: "308(c) funds may not be used to pay for any part of a project likely to prevent, delay, or substantially increase the costs of the development of energy facilities otherwise consistent with the state's approved program."

Response: In reviewing section 308(c) applications, NOAA will carry out its responsibility to see that funds are awarded for allowable uses, none of which are for projects that are likely to prevent, delay, or increase the costs of energy development that is otherwise consistent with the state's approved management program. Therefore, the suggested restriction is neither necessary nor appropriate.

§ 931.35 Section 308(c) allotment.

(1) Basing the proposed allotment formula on coastal county population puts smaller states and states that have controlled development in coastal marshes and other ecologically sensitive coastal areas at a disadvantage. It is these areas that face the greatest threat from new energy development. The allotment formula should therefore be based on the percentage increase in coastal population—since this factor better reflects development pressures from new and expanded energy resources. Consideration should also be given to seasonal fluctuation in coastal population.

Response: Coastal county population is a reasonable estimator of the need for impact assistance. In addition, this factor provides continuity with past OCZM practice. Its use will minimize disruptions in the existing pattern of funding. In addition, using 1980 census data provides recognition of population growth.

(2) Too much discretion is allowed the Assistant Administrator to establish the allocation formula and maximum and minimum shares. All the factors that make up the formula should be specified by regulation. A minimum share that equals two percent of the amount available in a fiscal year under section 308(c) or \$75,000, whichever is greater, should be established. The maximum share should be set at 15 percent of the amount available.

Response: Not specifying the allotment formula or the maximum and minimum shares in regulations simplifies the regulations and increases program flexibility.

However, the regulations require the Assistant Administrator to submit any proposed formula, which would include provisions for maximum and minimum shares, to the states for review and comment before allocations are calculated.

(3) Shoreline mileage used in the allocation formula should be clearly defined.

Response: Before calculating allotments § 931.35(c) requires the Assistant Administrator to submit the proposed allotment formula to the states for review and comment. If shoreline mileage is used in the allotment formula it will be the same as used in § 927.1 to allocate section 306 funds. See Comment 3 under *B. Allocating administrative grants* above.

(4) New or expanded coal activities should be given the greatest weight in the allocation formula.

Response: As previously noted, NOAA is not specifying the allotment formula in regulations. The details of the allotment formula will be developed in consultation with the states pursuant to § 931.35(c).

§ 931.31 Objectives.

(1) The phrase "and that permits the coastal states and units of local government a high degree of control and discretion" should be deleted from the statements of CEIP objectives in § 931.31(c) because this phrase is gratuitous and not supported by the legislative history.

Response: NOAA disagrees. The Conference Report (Report No. 94-1298) that accompanied the CEIP legislation states that the coastal state and localities "should make the basic decisions as to the particular needs" that result from energy development and therefore the "discretion" of "Federal officials should be correspondingly limited" (p. 24). Therefore, the objective of allowing states and local governments a high degree of control is consistent with the legislative history of the CEIP and the Administration's policy of returning resource management decisions to the states.

(2) The following objective should be added to the list of CEIP objectives in § 931.31: "To improve and strengthen coastal management in the United States."

Response: This objective is added to emphasize the close relationship

between CEIP and coastal management activities.

§ 931.36 Application for financial assistance.

(1) The proposed regulations improperly impose a requirement that the intra-state allocation process be used for OCS state participation grants.

Response: The proposed regulations were not intended to impose any new requirements on the use of funds for section 308(c)(2)—OCS State participation—purposes. Therefore, § 931.36(b)(3) has been amended to indicate that only planning and coal and AOE impact mitigation assistance must be subjected to the intrastate allocation process.

(2) The application and information requirements under § 931.36 are too burdensome for small construction and land acquisition projects.

Response: NOAA is also concerned about burdensome application requirements and has tried to keep these requirements to a minimum. NOAA has determined that the information requirements specified in § 931.36 are necessary and appropriate to assure compliance with Federal environmental and administrative requirements. NOAA has, however, deleted the requirement for submitting state and local permit applications and approvals for construction projects.

§ 931.32 Definitions.

(1) "Rail transport facility" should be added to the list of coal facilities in § 931.32(b)(1).

Response: NOAA agrees and has added the term "rail transport facility" to § 931.32(b)(1)(v).

(13) The regulations should clarify Section 308(c) funds may be used to mitigate the impact of the disposal of ash and sludge, the waste products of burning coal.

Response: NOAA has defined coal to include ash and sludge—the waste products of burning coal. It is NOAA's intent that the impacts of storing and transporting these waste products for the purpose of disposal be eligible under Section 308(c). NOAA has determined that definition of coal facility is sufficiently broad to include facilities involved in ash and sludge disposal and that amending the regulations is not necessary.

§ 931.34 Allowable uses.

(1) The regulations provide no assurance that funds authorized under section 308(c)(3) are expended for mitigating the impacts of coal or AOE activities.

Response: The new regulations appropriately place responsibility on the state for allocating available funds among allowable uses. As noted previously, Congress has not appropriated specific amounts for each of the allowable uses. In the absence of this guidance, NOAA has determined that the states should determine their needs and funding priorities.

D. Part 928 Review of Performance—Section 312

§ 928.1 General.

(1) The statement in § 928.1(b) that "these regulations may be supplemented by procedural memoranda issued periodically by the Office of Coastal Zone Management. . ." is unnecessary and might lead to confusion regarding the legal enforceability of the procedural memoranda.

Response: In response to comments on the Issue Paper on Review of Performance, NOAA shortened and simplified the proposed rules by eliminating detailed procedures from the regulations and retaining only the basic requirements of continuing review and evaluation. The purpose of the procedural memoranda is to provide a more detailed statement of how these basic requirements will be met. NOAA wishes to remove any possible ambiguity concerning the legal status of the procedural memoranda and, therefore, has deleted this reference from the regulations.

§ 928.2 Definitions.

(1) NOAA should change the definition of "justifiable" to state that the principal criterion for determining whether a deviation is justifiable is whether it is beyond the control of the state coastal program manager, not whether it is beyond the control of the state. The proposed criterion—beyond the control of the state—is unrealistic and does not recognize that state coastal programs are constrained in their ability to influence governors and State legislatures.

Response: NOAA disagrees with this comment. It is appropriate to assess whether or not a deviation is beyond "state" control. All coastal management programs must be approved and transmitted to NOAA by the governor of the state. Therefore, although NOAA acknowledges that state coastal program managers frequently are limited in their ability to influence state governors and legislatures, their programs are "state" programs and the states are responsible for carrying them out.

(2) NOAA should limit the criteria for determining whether a deviation is justifiable *only* to those criteria currently enumerated in the proposed definition. All of the criteria should be spelled out in the regulations in order to provide fair and predictable administration and the determination of whether the criteria are met should involve the public.

Response: It is not possible or desirable to define in advance the universe of criteria for assessing "justifiability." The purpose of the criteria identified in the definition is to provide the states and the public with information concerning how the "justifiability" determinations will be made. However, it is impossible to anticipate every conceivable kind of deviation and, therefore, impossible to define in advance the universe of criteria for evaluating them.

NOAA disagrees that the public should be involved in the "justifiability" determinations. While public participation in the program is vital, the statute requires the determination to be made by the Secretary. In making each determination, the Secretary will consider all available information, including public comments on the review of the State's performance.

(3) The definition of "work program" should not be formalized in the regulations. Work programs are usually designed at least a year in advance and, hence, represent a target or "guesstimate" of what a state coastal program feels reasonably able to undertake. There is no benefit in formalizing this document in the regulations.

Response: This comment reflects a misunderstanding of the purpose of defining this term. The definition is included in order to provide a basis for continuing review and evaluation of approved programs if Federal financial assistance ends. In this case, the states would provide to NOAA the same documentation they would need to provide to their state governments or other funding sources describing the work tasks they are undertaking during a particular time period, and NOAA would review the material to determine if the program implementation continued to meet or exceed the threshold requirements for approvability.

This work program must be distinguished from the work program that is a part of the Federal financial assistance award. The work program that is part of the award carries with it a commitment from the state to complete each work task successfully or face reduction or withdrawal of financial assistance. However, if Federal

financial assistance ends, obviously there will be no such sanction and the review will simply determine whether the state program continues to meet the requirements for approvability, in order that the state may continue to exercise Federal consistency. Because this distinction was not made clearly, we have added clarifying language to the definition of "work program" and to the use of the term "work program" in the continuing review procedures.

§ 928.3(b) Continuing review procedures.

(1) NOAA should limit state reporting requirements to one report per year.

Response: NOAA understands the need to limit the paperwork burden on the states. To this end, the periodic performance reports required for financial assistance awards are being used to accommodate information needs for continuing review and evaluation. NOAA will make every effort to limit additional information requirements by assessing carefully all information available in-house and targeting requests to fill specific information gaps. However, regular information is required for NOAA's program administration responsibilities—including technical monitoring of awards and continuing review and evaluation. The current information requirements—performance reports and a supplemental information request for evaluation—represent the minimum requirements for information necessary to carry out our responsibilities.

(2) The regulations should State explicitly that a site visit will normally be a part of each evaluation, unless fiscal constraints are so severe that such visits are precluded. Site visits are extremely valuable and the presumption in the regulations should be that they will occur.

Response: NOAA agrees with the intent of this comment. The regulations already provide that the Assistant Administrator may conduct site visits as a part of the evaluation. The discretionary "may" is used to provide necessary flexibility to adjust to funding constraints. Because the recommended standard—"fiscal constraints * * * so severe that such visits are precluded"—is also discretionary, NOAA has determined that no change should be made in the regulatory language.

(3) The discretionary "may" in the third line of § 928.3(b)(5), which provides that states "may" have two weeks from receipt to review draft findings, should be changed to "shall."

Response: NOAA agrees with the comment and we have made the suggested change.

(4) The regulations should specify that draft findings be made available to affected Federal agencies at the same time they are sent to the states.

Response: Draft findings are available to affected Federal agencies, or anyone else, upon request.

(5) Since the proposed rules impose time deadlines on the states in the conduct of evaluations, it is only fair that NOAA should also impose deadlines on itself. In addition, the deadlines should recognize the need for leadtime to respond to findings. Two types of specific suggestions for NOAA deadlines were made:

(a) Issue final findings at least 90 days before the expiration of a state's Federal financial assistance award, and at least 30 days before the the state coastal management agency must submit its proposed budget.

(b) Issue final findings within a certain time period after receipt of state comments on the draft findings. The suggested time periods ranged from two weeks to 60 days.

Response: NOAA recognizes the states' need for leadtime to incorporate the results of evaluations. However, for two reasons NOAA has determined that it should not commit itself to deadlines tying the date of issuance of final findings to the date of the Federal financial assistance award. First, such a tie could restrict NOAA in the expeditious award of available Federal financial assistance. Second, because many state budget cycles are several months in advance of coastal zone management financial assistance awards, a commitment to issue final findings 30 days before the state coastal zone management agency is required to submit its budget can mean a requirement for final findings 1 to 3 months after the beginning of the coastal zone management financial assistance award. Clearly it would be impossible to conduct a meaningful evaluation so soon after the work program under review has begun.

NOAA is willing, however, to commit itself to deadlines for issuing final findings which are tied to state review and comment on the draft findings. While two weeks is not enough time to give adequate consideration to state comments and produce the final findings, 60 days is usually more than sufficient. Therefore, NOAA has modified the regulations to include a commitment to issue final findings 45 days after receipt of state comments on the draft findings, unless NOAA notifies the state of the need for an extension to allow for further meetings or negotiations.

(6) The current regulatory language implies a mistrust of the states.

Response: The regulatory language is procedural only and does not imply a mistrust of the states. NOAA recognizes its responsibility to assist the state coastal program managers in carrying out their responsibilities for implementing their coastal management programs. However, NOAA is also responsible for overall program administration, which includes continuing review and evaluation. It is NOAA's intent to maintain a balance between these two responsibilities.

§ 928.3(c)(1) Requirements for continuing review of approved state coastal zone management programs—Scope of continuing reviews.

(1) NOAA should delete the phrase "all of the elements" of the approved program in § 928.3(c)(1)(i) and adhere to the statutory language. Since it is clear that Federal financial assistance for state coastal management programs is diminishing, the regulations should recognize that some elements of state programs will have to be reduced and that such reduction is possible without reducing the programs below the threshold requirements for Federal approval.

Response: NOAA agrees that the regulations need to recognize the reality of program adjustments in the face of reduced Federal financial assistance, as long as the adjustments do not reduce program elements below the level required for program approval. To this end, the proposed regulatory language defined the term "approved management program" to mean "those elements of the program required for program approval * * *". This change provides such recognition because the definitions of "adherence" and of "justifiable" are tied to the definition of "approved management program." Since the referenced phrase appears to have caused misunderstanding concerning the focus of continuing review and evaluation, NOAA agrees that it should be removed and has amended the regulations accordingly.

(2) NOAA should add to the scope of review a fourth element on Federal consistency.

Response: The three broad elements of the scope of review come directly from the statute. It is not necessary to add another element on Federal consistency because this is a specific factor in the overall evaluation of one of the broad elements already enumerated—the extent to which the state has implemented and enforced its approved program.

§ 928.3(c)(2) Procedure for assessing adherence to the approved management program.

(1) The phrases "fully" or "fully and effectively" in § 928.3(c)(2)(A), (B), and (C) should be deleted because they imply that states will be able to continue to implement their programs at the same or higher levels while Federal financial assistance declines.

Response: As stated above, NOAA agrees that the regulations need to acknowledge declining Federal financial assistance to states. Although in each case the referenced phrases are preceded by the phrase "the extent to which," they still appear to be interpreted as implying an unfair standard for evaluation. For this reason, NOAA agrees that they should be removed and has amended the regulations accordingly.

(2) The term "enforcing" should be added to § 928.3(c)(2)(A) because this term was added to the statute in the 1980 amendments and needs emphasis in the regulations.

Response: NOAA agrees with this comment and has modified the regulations accordingly.

(3) NOAA should delete the phrase "effectively playing a leadership role in coastal issues" in § 928.3(c)(2)(B) because it is highly subjective and is not a requirement of the program approval regulations.

Response: NOAA disagrees with this comment. Section 923.47 of the program approval regulations requires the state to designate a lead state agency which is capable of monitoring, coordinating and providing direction for its coastal program. As the "focal point for program administration," the lead state agency must play a leadership role in coastal issues in order to coordinate effectively the various state and local agencies with responsibilities for carrying out the program. Therefore, this is an appropriate subject for evaluation.

(4) NOAA should add to § 928.3(c)(2)(C) language recognizing specifically that carrying out the provisions of Federal consistency involves cooperation with Federal agencies to minimize potential conflicts. This point needs emphasis because conflicting requirements could impede or block Federal programs that are vital to the nation as a whole.

Response: This is unnecessary because it is understood that state implementation of Federal consistency involves working with affected Federal agencies to minimize potential conflicts. While it would be possible to enumerate a long list of specific issues for evaluation, such action is contrary to the

President's directive to avoid unnecessary regulation.

§ 928.3(c)(3) Procedure for assessing how the state has addressed the coastal management needs identified in Section 303(2)(A)-(I).

(1) The word "needs" should be changed to "objectives" wherever it appears in this section in order to track the statutory language.

Response: Although it is true that the statute speaks of "objectives" in section 303, it refers to those objectives in section 312 as "coastal management needs." Since these regulations implement section 312, NOAA has used the statutory language from that section of the Act.

(2) The listing of actions taken to address the coastal management needs of section 303, called for in § 928.3(c)(3)(i), is totally inadequate. A full description should be required, as well as information from which NOAA can ascertain what is *not* being done to address the coastal management needs. The commentator made detailed recommendations on the type of information NOAA should seek for this purpose.

Response: This comment reflects a misunderstanding of the proposed language. The listing of actions is merely the first step in the evaluation of how the states have addressed the coastal management needs of section 303. The regulations go on to say that the Assistant Administrator will assess *the extent to which* the state is meeting identified needs—that is, what the state is and *is not* doing—and the effectiveness of its action in addressing these needs.

NoAA disagrees with the suggestion that it require states to submit extensive information for this determination. All of the coastal management needs are not equally important in all states. Rather, they must be assessed within the context of the conditions in the state and the objectives and priorities of the state management program. Just as conditions in the states differ, so does the information needed to assess the states' efforts to address the coastal management needs of section 303. Extensive uniform information requirements are not appropriate under these circumstances and would create a large additional paperwork burden on the states at a time when the Federal government is attempting to reduce these requirements.

§ 928.3(c)(4) Procedure for assessing adherence to the terms of financial assistance awards.

(1) Section 928.3(c)(4)(ii)(D) should contain a requirement that NOAA respond within 30 days after receipt of a request from a state to modify a project.

Response: This suggestion relates to financial assistance award amendment procedures and hence is inappropriate for incorporation into these regulations. The current procedures for processing amendment requests are specified in the program approval regulations at § 923.100. These procedures require NOAA to acknowledge receipt of amendment requests within 10 working days. The notification must indicate NOAA's decision on the request or indicate a timeframe within which the decision will be made.

(2) No modification of approved projects should be permitted under (c)(4)(ii)(D) without opportunity for public review and comment.

Response: NOAA disagrees with this comment. These regulations provide the opportunity for full public participation. In addition the recipient must notify the A-95 clearinghouse of any substantive changes in approved awards. However, public participation does not extend to negotiations between the agency and the recipient on the financial assistance award itself.

§ 928.3(d) Requirements for continuing review of state coastal energy impact programs.

(1) The regulations should require unified coastal zone management and coastal energy impact program evaluation.

Response: NOAA is not sure how to interpret this comment. If the comment means that coastal zone management and coastal energy impact program evaluations should be conducted at the same time, the procedures already provide for this.

§ 928.4 Public Participation.

(1) The public participation section should be modified to:

(a) require a minimum 30-day period for advance notice of public meetings,

(b) provide wider distribution of findings, and

(c) provide for more Federal participation in the evaluations.

Response: NOAA agrees that the regulations should specify a minimum period for advance notice of the public meeting(s). The draft regulations already provide that the Assistant Administrator will publish an advance notice of intent to evaluate at least 45 days in advance of the public meeting(s) in order to put

interested parties on notice that an evaluation is about to occur. Because of frequent modifications of the evaluation schedules, it is often impossible for the states to comply with a 30 day advance notice requirement for public meetings. However, NOAA has modified the regulations to require that states provide a minimum of 15 days notice of the public meeting(s) on their evaluations.

NOAA believes it is not necessary for the regulations to require wider distribution of findings. The regulations already provide for a notice of availability of final findings to be published in the *Federal Register*, and copies of the findings are available to anyone who requests them.

Similarly, NOAA believes that the regulations already provide for full Federal agency participation in the evaluations. Current procedures provide that affected Federal agencies be contacted before evaluations occur, interviewed during evaluation site visits, and invited to participate in public meetings and/or provide written comments on the evaluations.

§ 928.5 Enforcement.

(1) Section 928.5(a)(2)(ii) should be rewritten to provide that enforcement provisions be triggered by a finding that a state is not achieving "all" of its significant improvement objectives.

Response: The commentator evidently intends that the suggested change would make the provision more restrictive by assuring that states must make significant improvement in all of their objective areas. However, the suggested change actually would make the provision less restrictive by triggering the enforcement provisions only if the Assistant Administrator found that the state was failing to achieve *all* of its significant improvement objectives (i.e., using this language, for example, a state could be failing in seven out of eight areas without triggering the enforcement provisions). In fact, the current regulatory language assures that states will achieve all significant improvement objectives or face some level of reduction of financial assistance. Therefore, NOAA has made no change to the regulatory language.

(2) Section 928.5(a)(2)(ii) should be modified by replacing "achieving" with "performing," replacing "objectives" with "tasks," and adding language to clarify that if a state has notified and negotiated with the Assistant Administrator necessary project modifications, as provided in § 923.103(d), the evaluation will be based upon the projects as modified.

Response: The words "achieving" and "objectives" are taken directly from the

statute and NOAA has determined that they should not be replaced by less precise substitutes. However, the regulations provide that the assessment of whether a state is achieving its significant improvement objectives will be based on the state's progress in accomplishing the significant improvement tasks negotiated between the state and Assistant Administrator before the beginning of each financial assistance award.

Since procedures for project modification are provided in the regulations, it is understood that the evaluations will be based upon approved projects as modified up to the date of the evaluation. Additional regulatory language is unnecessary.

(3) NOAA should not limit itself to reducing a state's funds for failure to make significant improvement only by the amount previously allotted to the task(s) found deficient. While this might be advisable in some instances, it may not be appropriate for all and the statute does not restrict NOAA's action.

Response: NOAA disagrees with this comment. NOAA believes fairness dictates that a state's funds be reduced for failure to make significant improvement only by the amount allocated to the deficient significant improvement task(s). To do otherwise would create a major disincentive for the states to undertake challenging significant improvement activities.

(4) The regulations give NOAA too much discretion in deciding what is "satisfactory progress" toward significant improvement.

Response: NOAA disagrees with this comment. Satisfactory progress will be determined on a case-by-case basis using the specific products and schedules negotiated between the state and the Assistant Administrator for each significant improvement task.

(5) The regulations should provide public notice of the intent to withdraw program approval, and opportunity for public comment and participation at public hearings.

Response: The regulations already contain these provisions in § 928.5(b)(2)(ii) and (iv).

IV. Other Actions Associated With the Notice of Final Rulemaking

A. Classification Under Executive Order (E.O.) 12291 of February 17, 1981

NOAA has concluded that these regulations are not major because they will not result in:

(1) An annual effect on the economy of \$100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The final rules foster improvements in an existing system for administering a program of financial assistance to state and local governments. Therefore, these rules only serve to strengthen the institutional framework for making rational coastal management decisions and will not result in any major direct or indirect economic or environmental impacts.

B. Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required for this notice of final rulemaking. The regulations set forth procedures for distributing Federal financial assistance among participating state governments and for evaluating the performance of those state governments in achieving coastal management objectives. The final rules directly affect only state government entities, which are not "small government jurisdictions" as defined by Pub. L. 96-354, The Regulatory Flexibility Act. The final rules will have no effect on small businesses and a negligible effect on local units of government who participate only through the States.

C. Paper Work Reduction Act of 1980 (Public Law 96-511)

These regulations will impose no information collection requirements of the type covered by Pub. L. 96-511 on affected state governments. Information requirements of Section 312 Continuing Review regulations embody existing procedures and do not constitute any increase in reporting on the part of any affected party.

D. National Environmental Policy Act (NEPA)

NOAA has concluded that publication of the final rules does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

E. Public Participation

NOAA has actively encouraged public participation in the development of these final rules. NOAA issued an advance notice of proposed rulemaking with a 60-day comment period and

distributed issue papers dealing with the proposed rules to over 400 interested persons on a mailing list maintained by the Office of Coastal Zone Management. NOAA reviewed and considered 38 sets of comments on the ANPR and 66 sets of comments on the issue papers in developing proposed regulations. In addition, meetings and briefings on the regulatory process and the substantive issues involved were held with managers of state coastal zone management and coastal energy impact programs, Federal agency representatives, and interest groups. A notice of proposed rulemaking was published on pages 51393-51402 of the Federal Register of October 20, 1981, and invited comments for 30 days ending November 20, 1981. Comments were received from 32 sources including Federal and state government agencies, regional organizations and interest groups.

List of Subjects in 15 CFR Parts 923, 927, 928, and 931

Administrative practice and procedure, Coastal zone, Grant programs, Natural resources, Energy
William Matuszeski,
Acting Assistant Administrator for Coastal Zone Management.

PART 923—COASTAL ZONE MANAGEMENT PROGRAM DEVELOPMENT AND APPROVAL REGULATIONS

For reasons set out in the Preamble, Part 923 of Title 15 of the Code of Federal Regulations is amended as set forth below.

§ 923.85 [Removed]

1. By removing § 923.85.
2. By adding new Subpart K to read as set forth below.

* * * * *

Sec.	
923.101	General.
923.102	Significant Improvement Defined.
923.103	Selection and Approval of Activities Leading to Significant Improvements.
923.104	Establishing the Increasing Proportion.
923.105	Failure to Agree to Pursue Significant Improvements.

Subpart K—Improving Coastal Zone Management

Authority: Sections 303 and 306 of the Coastal Zone Management Act and Section 5 of the Coastal Zone Management Improvement Act of 1980.

§ 923.101 General.

- (a) Statutory citations:
- (1) Section 303(2)

The Congress finds and declares that it is the national policy—

* * * * *

(2) To encourage and assist the States to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as to the needs for economic development, which programs should at least provide for—

(A) The protection of natural resources, including wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and their habitat, within the coastal zone.

(B) The management of coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, and erosion-prone areas and in areas of subsidence and saltwater intrusion and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands.

(C) Priority consideration being given to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation, and the location, to the maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such development already exists.

(D) Public access to the coasts for recreation purposes.

(E) Assistance in the redevelopment of deteriorating urban waterfronts and ports, sensitive preservation and restoration of historic, cultural, and esthetic coastal features.

(F) The coordination and simplification of procedures in order to ensure expedited governmental decisionmaking for the management of coastal resources.

(G) Continued consultation and coordination with, and the giving of adequate consideration to the views of, affected Federal agencies.

(H) The giving of timely and effective notification of and opportunities for public and local government participation in coastal management decisionmaking, and

(I) Assistance to support comprehensive planning, conservation, and management for living marine resources, including planning for the siting of pollution control and aquaculture facilities within the coastal zone.

(2) Section 306(a).

The Secretary may make grants to any coastal State for not more than 80 per centum of the costs of administering such State's management program if the Secretary—

(3) Finds, if such program has been administered with financial assistance under this section for at least one year, that the coastal State will expend an increasing portion of each grant received under this section (but not more than 30 per centum of the grant unless the State chooses to expend a higher percentage) on activities that will

result in significant improvement being made in achieving the coastal management objectives specified in Section 303(2)(A)-(I).

(b) States whose approved programs have been administered for at least one year with Section 306 funds must expend an "increasing proportion" of each subsequent Section 306 financial assistance award on activities that will result in "significant improvement" in achieving certain national coastal management objectives. This subpart defines "significant improvement," describes the process for determining which significant improvement activities a State may perform, establishes the formula for determining "increasing proportion," and sets forth the consequences of failure to pursue significant improvements.

§ 923.102 Significant improvement defined.

(a) A "significant improvement" is an accomplishment that addresses any of the objectives of Section 303(2)(A)-(I) by:

(1) Substantially expanding the scope of the approved program (such expansion of program scope includes, but is not limited to an amendment or routine program implementation), or

(2) Substantially strengthening the ability of the State to implement or enforce the approved program.

(b) Significant improvements include, but are not limited to, the following types of accomplishments:

(1) The adoption of new enforceable policies for coastal decisionmaking of the conversion of nonenforceable (encouragement) policies to enforceable policies. The State (or local government) may adopt new policies by legislation, rulemaking, memoranda of understanding, executive order or other legally sufficient means.

(2) The adoption of refined enforceable policies for coastal decisionmaking including:

(i) More specific standards for the implementation of existing statutes.

(ii) Site specific management plans for areas designated as Areas of Particular Concern and Areas for Preservation or Restoration or other areas beyond what is required by the approved program.

(3) The extension of existing enforceable coastal management policies to new geographic areas beyond what is required by the approved program.

(4) Development of more effective or efficient administration of the approved management program including:

(i) Improved capability of the coastal management agencies to implement State coastal regulatory, planning, and

management requirements contained in the approved program.

(ii) Streamlined intergovernmental coordination and public participation mechanisms.

(5) The following to the extent they exceed what is required by an approved program.

(i) Development of natural resource information critical to making informed coastal management decisions.

(ii) Development and implementation of State and local strategies, projects, and management programs for coastal resources and uses.

§ 923.103 Selection and approval of activities leading to significant improvements.

(a) The State will take the initiative in proposing significant improvement activities. The State's financial assistance application will describe the management activities it will perform and the significant improvements it expects to achieve over the course of the next financial assistance award period. This description will clearly identify specific schedules and expected products.

(b) Based on the results of the continuing review described in 15 CFR Part 928, the Assistant Administrator will determine in consultation with the State if the management activities proposed by the State are likely to result in significant improvement in achieving the coastal management objectives of section 303(2)(A)-(I).

(c) The States and the Assistant Administrator will negotiate an agreement at the beginning of each financial assistance award period establishing: (1) The specific significant improvement objectives to be achieved during the financial assistance award period, (2) The Federal funds to be devoted to each task, and (3) The basis for assessing the State's progress in accomplishing each significant improvement task. The agreement will be included as part of the financial assistance award. There is no requirement that the State address each of the nine significant improvement objectives within an individual financial assistance award period.

(d) If unforeseen circumstances arise that affect the accomplishment of any significant improvement task, the State must provide the Assistant Administrator with prompt notice and negotiate with the Assistant Administrator any necessary changes to the schedule and products before the scheduled completion dates. The Assistant Administrator shall provide the State agency with a schedule for negotiation and a time certain when a

decision will be available to the State agency. Any such changes will be made part of the agreement included in the financial assistance award.

(e) Significant improvements need not be achieved within the period of one financial assistance award if there is specific reason to identify a longer period.

§ 923.104 Establishing the "increasing proportion".

(a) During the first year a State is required to make significant improvements (its second 306 award), it must agree to expend 20 percent of the Federal share of its upcoming section 306 financial assistance award on activities designed to lead to significant improvements. Thereafter, the State must agree to constant incremental increases of at least one percent in each succeeding year. The amount to be spent on significant improvements will be determined by multiplying the applicable percentage by the amount of Federal funds actually received.

(b) In no case may a State be required to expend more on significant improvement activities than the incremental increases established by this section. However, States may voluntarily exceed the minimum requirement on significant improvement expenditures established by this section. The failure to make significant improvements as a result of those expenditures in excess of the minimum requirement will not result in any reduction in financial assistance under the provisions of § 928.5(a), unless such failure results in an unjustified deviation under § 928.5(b).

§ 923.105 Failure to agree to pursue significant improvements.

(a) If a State chooses not to pursue significant improvements in accordance with this subpart, the Secretary must withhold all financial assistance under Section 306. However, a decision not to award section 306 funds does not necessarily require withdrawal of program approval. A State may continue to implement and enforce its approved program with State funds. Under these circumstances, a State will still be able to exercise its Federal consistency review rights under Section 307 and will remain eligible for CEIP funds if it meets all other eligibility requirements.

(b) A discussion of the procedures by which the Assistant Administrator will evaluate whether a State has failed to make significant improvements is contained in 15 CFR Part 928, Review of Performance of State Coastal

Management and Coastal Energy Impact Programs.

Form the reasons set out in the Preamble, Part 927 of Title 15 of the *Code of Federal Regulations* is revised to read as set forth below.

PART 927—ALLOCATION OF SECTION 306 PROGRAM ADMINISTRATION GRANTS

§ 927.1 Allocation formula.

(a) Statutory Citation

(1) Section 306(a).

The Secretary may make grants to any coastal State for not more than 80 per centum of the costs of administering such State's management program . . .

(2) Section 306(b).

Such grants shall be allocated to the States with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the plan, population of the area, and other relevant factors: *Provided*, That no annual grant made under this section shall be less than one per centum of the total amount appropriated to carry out the purposes of this section: *And provided further*, That the Secretary shall waive the application of the one per centum minimum requirement as to any grant under this section, when the coastal State involved requests such a waiver.

(b) *Minimum/maximum allocation.* The Assistant Administrator may establish minimum and maximum State allocations.

(c) *Allocation formula factors and weighting.* Each State eligible to receive a financial assistance award shall be allocated an amount of the total available Federal funding based on:

(1) A minimum share (established by the Assistant Administrator) of the total funding available for allocation to eligible State coastal management programs, plus

(2) A proportionate share of the remainder to be divided as follows:

(i) Sixty percent will be allocated based on each eligible State's proportionate share of the length of tidal shoreline and/or Great Lake shoreline mileage of all participating States based on the most recently available data from or accepted by the National Ocean Survey, and

(ii) Forty percent will be allocated on each eligible State's proportionate share of the aggregate population of all coastal counties contained in whole or in part within the designated coastal boundary of all eligible State coastal programs based on official data or the most recent U.S. census.

(3) Should any State's base allocation exceed the maximum established by the Assistant Administrator, the excess

amount shall be subtracted from the established maximum and redistributed proportionately among those eligible States with allocations not exceeding the established maximum.

(d) *Use of the allocation formula.* The allocation formula shall be used to establish base level allocations for each State coastal management program eligible to receive Federal funding.

(e) *Adjustment for phase down of Federal funding.* The Assistant Administrator may adjust base level allocations as necessary to implement a phase down of Federal financial support. Any such adjustment shall be implemented in a manner which gives some priority to recently approved State coastal management programs. Options for implementation of a phase down will be submitted to the States for review and comment.

(f) *Calculation of financial assistance award levels.* Actual financial assistance award levels will be set from base level allocations, any adjustments under paragraph (e) of this section, and in accordance with the provisions of section 312(a), (c), and (d). Award levels may fall below the one percent minimum established under section 306(b) for purposes of implementing section 312(c) of the Act.

(Sections 306 and 317 of the Coastal Zone Management Act)

5. Part 928 is revised to read as set forth below:

PART 928—REVIEW OF PERFORMANCE

Sec.

928.1 General.

928.2 Definitions.

928.3 Procedure for conducting continuing review of approved State CZM programs and State Coastal Energy Impact Program.

928.4 Public participation.

928.5 Enforcement.

Authority: Sections 312 and 316 of the Coastal Zone Management Act, as amended.

§ 928.1 General.

(a) These regulations set forth the requirements for review of approved State coastal zone management (CZM) programs pursuant to section 312 of the Act, and of State coastal energy impact programs pursuant to sections 312 and 316 of the Act. They define "continuing review" and other important terms, and set forth the procedures for:

- (1) Conducting continuing reviews of approved State CZM programs and State coastal energy impact programs,
- (2) Providing for public participation,
- (3) Reducing financial assistance for failure to make significant improvement, and

(4) Withdrawing program approval and financial assistance.

§ 928.2 Definitions.

(a) "Continuing review" means monitoring State performance throughout the period of the work program. As part of the continuing review, evaluations of approved CZM programs will be conducted and written findings will be produced at least once every two years but not more than once every year. Evaluations of coastal energy impact programs will be conducted on a schedule to be determined by the Assistant Administrator.

(b) "Adherence" means to comply with the approved CZM program and financial assistance award or work program.

(c) "Justifiable" means that the State must show that the deviation(s) from the approved CZM program was warranted. This determination will be made by the Assistant Administrator in consultation with the State on a case-by-case basis. The principal criterion to be used in making this determination is the extent to which the deviation was beyond State control. Other criteria, including, but not limited to, the following will be considered:

- (1) The extent to which the deviation impairs the ability of the program to achieve its goals and objectives;
- (2) Whether the deviation is part of a pattern or is an isolated incident;
- (3) The magnitude of the deviation.

(d) "Approved CZM program" means those elements of the program required for program approval by the Secretary, under 15 CFR Part 923 (Development and Approval Provisions), including any changes to those elements made by approved amendments and routine program implementation.

(e) "Financial assistance award" means a legal instrument that creates a relationship between the Federal government and another entity (recipient). The principal purpose of the award is the transfer of money or services in order to accomplish a public purpose authorized by Federal statute. The term "financial assistance award" encompasses grants, loans, and cooperative agreements. The following elements constitute the award:

- (1) The work program described in the approved application;
- (2) The budget;
- (3) The standard terms and conditions of the award;
- (4) Any special award conditions included with the award;
- (5) The statutes and regulations under which the award is authorized; and

(6) Applicable OMB cost principles and administrative requirements.

(f) "Work program" means a description of the tasks to be undertaken by a State for a given time period for the purpose of implementing and enforcing an approved CZM program. The work program is submitted as a part of a Federal financial assistance application, or separately in the absence of Federal financial assistance.

(g) "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management or the NOAA Official responsible for directing the Federal coastal zone management program.

§ 928.3 Procedure for conducting continuing reviews of approved State CZM programs and State coastal energy impact programs.

(a) Statutory citations:

(1) Subsection 312(a).

The Secretary shall conduct a continuing review of the performance of coastal States with respect to coastal management. Each review shall include a written evaluation with an assessment and detailed findings concerning the extent to which the State has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in Section 303(2)(A)-(I), and adhered to the terms of any grant, loan, or cooperative agreement funded under this title.

(2) Section 316. Section 316 includes a provision for a biennial Coastal Zone Management Report which must include:

* * * a description of the economic, environmental, and social consequences of energy activities affecting the coastal zone and an evaluation of the effectiveness of financial assistance under Section 308 in dealing with such consequences.

(b) Continuing review procedures.

(1) Each State will submit a financial assistance application or work program, whichever is applicable, on a timetable negotiated with the Assistant Administrator, describing the tasks to be undertaken by the State for the purpose of implementing and enforcing its approved CZM program.

(2) For the purpose of evaluation, the States will submit performance reports as specified in the Special Award Conditions, or, if the State is not receiving an award, as negotiated with the Assistant Administrator. The reports will address all areas identified in each State's Performance Report Guidelines.

(3) The Assistant Administrator will collect information on the State CZM programs on a continuing basis. At the beginning of each evaluation, the Assistant Administrator will analyze available information, identify

information gaps, and formulate any additional information needs that will be the subject of a supplemental information request to the State.

(4) The Assistant Administrator may conduct a site visit as a part of the evaluation.

(5) Draft findings of the evaluation will be transmitted to the State. The State will have a minimum of two weeks from receipt of the draft findings to review them and provide comments to the Assistant Administrator. This review time may be extended upon request from the State.

(6) Within two weeks from receipt of the draft findings, a State may request a meeting with the Assistant Administrator to discuss the draft findings and the State's comments.

(7) Within 45 days of receipt of State comments, the Assistant Administrator will issue final findings. This period may be extended upon notification to the State. Notice of the availability of the final findings will be published in the Federal Register. Copies will be sent to the head of the State CZM agency, the State program manager, and any person who requests them.

(c) Requirements for continuing review of approved State CZM programs.

(1) *Scope of continuing reviews.* The continuing review of a State's approved CZM program will include an evaluation of the extent to which the State has:

- (i) Implemented and enforced the program approved by the Secretary;
- (ii) Addressed the coastal management needs identified in Section 303(2)(A)-(I); and
- (iii) Adhered to the terms of financial assistance awards.

(2) *Procedure for assessing adherence to the approved CZM program.*

(i) In reviewing adherence of a State to its approved CZM program, the Assistant Administrator will evaluate all aspects of the "approved CZM program" as defined in § 928.2(d). The evaluation will examine the extent to which:

- (A) The State is implementing and enforcing its approved CZM program;
- (B) The management agency is effectively playing a leadership role in coastal issues, monitoring the actions of appropriate State and local agencies for compliance with the approved CZM program, and assuring the opportunity for full participation of all interested entities in CZM program implementation; and
- (C) The management agency is effectively carrying out the provisions of Federal consistency.

(ii) The findings concerning the State's adherence to its approved CZM program

will be used in negotiating the next financial assistance award or work program, whichever is applicable.

(3) *Procedure for assessing how the State has addressed the coastal management needs identified in section 303(2)(A)-(I).* The assessment of the extent to which the State has addressed the coastal management needs identified in Section 303(2)(A)-(I) will occur as follows:

(i) The State, in its performance report, will provide the Assistant Administrator with a listing of all actions it is taking during the performance report period to address the national coastal management needs and how these actions relate to conditions in the State and the objectives and priorities in the State CZM program.

(ii) The Assistant Administrator, in the evaluation findings, will assess the extent to which the State's actions are targeted to meeting identified "needs" and the effectiveness of the actions in addressing those needs. Based on this assessment, the Assistant Administrator will make findings and recommendations of the extent to which each State is addressing the coastal management needs identified in Section 303.

(iii) The findings and recommendations concerning how the State has addressed the coastal management needs of section 303 will be used by the Assistant Administrator in negotiating the next financial assistance award, if any. The evaluation required by section 312(c), concerning whether a coastal State is "failing to make significant improvement in achieving the coastal management objectives," is detailed in § 928.5(a).

(4) *Procedure for assessing adherence to the terms of financial assistance awards*

(i) Adherence to financial and administrative terms of each financial assistance award will be determined by the NOAA Grants Office and the Department of Commerce Inspector General. Adherence to programmatic terms of each financial assistance award will be determined by the Assistant Administrator and the NOAA Grants Office. These determinations will be made in accordance with the requirements outlined in these regulations, the findings of a financial audit of the award, and the following criteria:

- (A) Compliance with the statute, regulations, and applicable OMB circulars;
- (B) Submission of required reports and satisfactory completion of work

products as described in the approved application and within the timeframe specified;

(C) Compliance with Standard Terms and Conditions and Special Award Conditions within the specified timeframes;

(D) Use of award funds only for approved projects; and

(E) Substantive modification of approved projects only with the prior agreement of NOAA.

(ii) The findings concerning adherence to the terms of financial assistance awards will be used in negotiating the next financial assistance award, if any.

(d) Requirements for continuing review of State coastal energy impact programs.

(1) *Scope of continuing reviews.* The continuing review of State coastal energy impact programs will include the following elements:

(i) An evaluation of the State's adherence to the terms of financial assistance awards;

(ii) An evaluation of the relationship between coastal energy impact projects and the approved CZM program;

(iii) A description of energy activities in coastal areas and the impact resulting from these activities; and

(iv) An evaluation of the effectiveness of the coastal energy impact program in dealing with these consequences.

(2) *Procedure for assessing adherence to the terms of financial assistance awards.* See § 928.3(c)(4).

§ 928.4 Public participation.

(a) Statutory citation, section 312(b):

For the purpose of making the evaluation of a coastal State's performance, the Secretary shall conduct public meetings and provide opportunity for oral and written comments by the public. Each such evaluation shall be prepared in report form and the Secretary shall make copies thereof available to the public.

(b) Requirements.

(1) The Assistant Administrator will publish a Notice of Intent to Evaluate in the *Federal Register* at least 45 days before the public meeting(s). The notice will include a Statement of the availability of the State's performance report and the supplemental information request.

(2) Each State will issue a notice of the public meeting(s) on its evaluation in the newspaper(s) of largest circulation in the coastal area where the meeting(s) is being held or take other reasonable action to inform the interested public, such as sending a notice of the meeting(s) to persons on its mailing list and publishing a notice in its newsletter, at least 15 days before the date of the public meeting(s). The State will inform

the public that oral or written comments will be accepted and that attendance at the public meeting(s) is not necessary for submission of written comments.

(3) Notice of the availability of final findings to the public upon request will be published in the *Federal Register*.

§ 928.5 Enforcement.

(a) Reduction of financial assistance for failure to make significant improvement.

(1) Statutory citation section 312(c):

The Secretary shall reduce any financial assistance extended to any coastal State under Section 306 (but not below 70 per centum of the amount that would otherwise be available to the coastal State under such section for any year), and withdraw any unexpended portion of such reduction, if the Secretary determines that the coastal State is failing to make significant improvement in achieving the coastal management objectives specified in Section 303(2)(A)-(I).

(2) Requirements.

(i) The evaluation will examine whether the State is accomplishing the significant improvement tasks in accordance with specific schedules and expected products negotiated between the State and the Assistant Administrator before the beginning of each financial assistance award, in accordance with the procedures in 15 CFR 923.103.

(ii) If the Assistant Administrator finds, during the continuing review, that the State is not achieving one or more significant improvement objectives as negotiated, the State will be given an opportunity to demonstrate that it can accomplish the objective(s), as prescribed in the financial assistance award, before its expiration.

(iii) If the State cannot make this demonstration to the Assistant Administrator's satisfaction, the Assistant Administrator will determine that the State is failing to make satisfactory progress toward significant improvement in accordance with the previously negotiated agreement.

(iv) Based on this determination, the agency will reduce a State's financial assistance award and withdraw any unexpended portion of the current award by no more than the percentage required to be devoted to making significant improvements for that year. The reduction or withdrawal shall be proportional to the amount of funds allocated to tasks that have failed to result in satisfactory progress in achieving significant improvement.

(b) Withdrawal of program approval and financial assistance.

(1) Statutory citation, section 312(d) and 312(e):

(d) The Secretary shall withdraw approval of the management program of any coastal State, and shall withdraw any financial assistance available to that State under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal State is failing to adhere to, is not justified in deviating from (1) the management program approved by the Secretary, or (2) the terms of any grant or cooperative agreement funded under Section 306, and refuses to remedy the deviation.

(e) Management program approval and financial assistance may not be withdrawn under Subsection (d), unless the Secretary gives the coastal State notice of the proposed withdrawal and an opportunity for a public hearing on the proposed action. Upon the withdrawal of management program approval under this Subsection (d), the Secretary shall provide the coastal State with written specifications of the actions that should be taken, or not engaged in, by the State in order that such withdrawal may be canceled by the Secretary.

(2) Requirements.

(i) If the Assistant Administrator finds that a State is failing to adhere to, and is not justified in deviating from, its approved CZM program or those terms of its Section 306 financial assistance award specifically implementing the approved CZM program, the agency will provide the State with written notice of this finding and the agency's obligation to withdraw program approval and financial assistance under this title. This notice will set forth the deviation(s) from the approved CZM program or the financial assistance award and will include specifications of the actions that must be taken in order to remedy the deviation(s). The State will be given 30 days from receipt of this notice to respond with evidence of adherence or justification for its deviation(s). During this 30-day period, the State may request up to 30 additional days to respond, for a maximum of 60 days from receipt of notice.

(ii) If the State does not respond satisfactorily within the time allowed, the agency will notify the State of intent to take the proposed action. This notice will be published in the *Federal Register* and will inform the State of its right to a public hearing.

(iii) If the State does not request a public hearing or submit satisfactory evidence of adherence or justification within 30 days of publication of this notice, the agency will decide whether to withdraw program approval and financial assistance and the agency will notify the State in writing of the decision and the reasons for it. The notification will set forth actions by the State which would cause the Secretary to cancel the withdrawal.

(iv) If the State requests a public hearing within 30 days of publication of the notice of intent to withdraw program approval and financial assistance, the Assistant Administrator will publish 30 days advance notice of the hearing in the Federal Register and the newspaper(s) of largest circulation in the State's coastal zone. The hearing will be held in a location convenient to the citizens of the State's coastal zone and a record of the hearing will be maintained. Within 30 days of the completion of the hearing, the agency will make the determination as set forth in (iii), above.

(3) If program approval and financial assistance are withdrawn pursuant to this section, a notice will be placed in the Federal Register and Federal consistency under Section 307 of the Act will cease to apply to the State's CZM program.

§ 923.82 [Amended]

6. Section 923.82(b)(3) is amended as follows:

a. After the words, "that State may be subject to," change the word "termination" to "withdrawal."

b. After the end of the sentence, change the reference, "(See § 923.85)" to "(See 15 CFR 928.5(b))."

For the reasons set out in the Preamble, Part 931 of Title 15 of the Code of Federal Regulations is amended as set out below.

1. By removing Subpart L and revising Subpart D to read as set forth below:

PART 931—COASTAL ENERGY IMPACT PROGRAM

Subpart D—Coastal Energy Impact Grants

Sec.	
931.30	General.
931.31	Objectives.
931.32	Definitions.
931.33	Eligibility for financial assistance under this subpart.
931.34	Allowable uses.
931.35	Section 308(c) allotment.
931.36	Application for financial assistance.
931.37	Limitations on expenditures.

Subpart C—[Removed]

Subpart D—Coastal Energy Impact Grants

Authority: Section 308 and 317 of the Coastal Zone Management Act of 1972, as amended.

§ 931.30 General.

This subpart sets forth the objectives of providing financial assistance to coastal states under section 308(c) and its allowable uses. It also describes

procedures for allotting section 308(c) moneys among eligible coastal states and for applying for assistance under section 308(c).

§ 931.31 Objectives.

The objectives of assistance under this subpart are:

(a) To help coastal states and units of local government plan for economic, social, or environmental consequences of new or expanded energy facilities and to prevent, reduce, or mitigate losses resulting from the transportation, transfer, or storage of coal or from alternative ocean energy activity.

(b) To help coastal states develop the capability to participate effectively in Federal policy, planning, and managerial decisions relating to the development of OCS oil and gas resources.

(c) To provide financial assistance that is simple to administer and that permits the coastal states and units of local government a high degree of control and discretion.

(d) To improve and strengthen coastal zone management in the United States.

§ 931.32 Definitions.

(a) *Coal*. The term "coal" includes all forms of anthracite and bituminous coal, peat, coke, and lignite. In addition to these substances, the term includes ash and sludge, which are waste products of burning coal.

(b) *Coal Facility*. The term "coal facility" includes the following:

(1) Any facility used in the transportation, transfer, or storage of coal. Such facilities include, but are not limited to:

- (i) Coal loading docks
- (ii) Coal barging terminals
- (iii) Coal ports
- (iv) Coal storage yards
- (v) Rail transport facilities

(2) Any facility that converts coal into another form of energy useable by consumers or industry including but not limited to:

- (i) Power plants
- (ii) Synthetic fuel plants
- (iii) Liquefaction plants
- (3) Any facility that utilizes,

transports, transfers, stores, handles, processes or produces coal, including mines and steel mills.

(c) *Alternative Ocean Energy (AOE) Facility*. The term "alternative ocean energy facility" means:

(1) Any facility located in or seaward of, the coastal zone whose primary purpose is to utilize the mechanical, chemical, physical, biological or thermal properties of ocean or lake waters in the conversion of those properties into a form of energy usable by consumers or industry. Facilities whose only reliance

on ocean or lake waters is for cooling (such as nuclear power plants), liquefied natural gas facilities, and facilities for the exploration for and development of offshore oil and natural gas do not constitute AOE facilities. Solar facilities will also be considered AOE facilities. AOE facilities include, but are not limited to:

(i) Ocean Thermal Energy Conversion (OTEC).

(ii) Tidal and wave generation of electricity.

(iii) Ocean current generation of electricity.

(iv) Salinity gradient generation of electricity.

(v) Pumped storage generation of electricity.

(vi) Solar generation of electricity.

(vii) Biomass production—e.g., kelp farms.

(viii) Wind generation of electricity that depends on the sea or lake breeze.

(d) *Likely to be affected by OCS energy activity*. The Assistant Administrator will find a coastal state "likely to be affected by OCS energy activity" if the Assistant Administrator determines that:

(1) The state can reasonably expect to be exposed to significant social, economic, or environmental consequences as a result of any OCS lease sale that has taken place or is scheduled to take place under the Department of the Interior's (DOI) Five Year Planning Schedule; or

(2) The state has administrative, policy, operational, or managerial responsibilities under the OCS Lands Act that should properly be supported with Section 308(c) funds.

§ 931.33 Eligibility for financial assistance under this subpart.

(a) A coastal state is eligible for financial assistance if it meets the basic eligibility requirements of Subpart C of this Part.

(b) A unit of local government may apply for assistance under this subpart through the state agency designated under Subpart C of this Part to apply for CEIP assistance.

§ 931.34 Allowable uses.

(a) Funds granted to a state under section 308(c) must be used in accordance with the provisions of this section.

(1) *Planning*. States may use section 308(c) funds to plan for any economic, social, or environmental consequence that has occurred, is occurring, or is likely to occur in the coastal zone as a result of siting, constructing, expanding or operating new or expanded energy

facilities that significantly affect the coastal zone, and for reasonable costs of administering the state coastal energy impact program.

(2) *OCS State participation.* States likely to be affected by OCS energy activity may use section 308(c) funds to carry out their responsibilities under the OCS Lands Act. These responsibilities include participating in the administrative, policy, operational, and managerial decisions relating to management of the oil and natural gas resources of the Outer Continental Shelf.

(3) *Coal and AOE impact mitigation.* States may use section 308(c) funds to design and implement projects (including construction and land acquisition) to prevent, reduce, or mitigate unavoidable losses to valuable coastal environmental and recreational resources resulting from the transportation, transfer, or storage of coal or from AOE activities.

§ 931.35 Section 308(c) allotment.

(a) The Assistant Administrator will develop a formula for allotting available Section 308(c) funds among eligible coastal states. This formula will be designed to estimate the relative need for planning, OCS participation, and coal and AOE impact mitigation among eligible states.

(b) This formula will be based on the number of existing and proposed new or expanded energy facilities, the number of existing and proposed coal facilities that significantly affect the coastal zone, the number of existing and proposed AOE facilities located in or seaward of the coastal zone, the nature of their impacts and other relevant factors deemed appropriate by the Assistant Administrator such as coal tonnage, OCS leasing, production of OCS oil and natural gas, shoreline mileage, and coastal county population.

(c) Each fiscal year, before computing an allotment, the Assistant Administrator will submit this formula to all eligible coastal states for review and comment. If appropriate, the formula will be revised before any final allotments are calculated.

(d) The Assistant Administrator may establish minimum and maximum allotments.

§ 931.36 Application for financial assistance.

(a) Applications for financial assistance under this Subpart may be submitted as soon as states are notified of their allotments under Section 308(c).

(b) Applications for assistance under this Subpart must contain the following certification and information:

(1) A clear and brief description of the projects and activities that will be funded under section 308(c) as they relate to allowable uses under § 931.34. For construction projects, as defined in the Office of Management and Budget Circular A-102, or planning projects that are the first stages of site specific development projects, the following additional information is required:

(i) environmental impact assessment data in detail sufficient to allow the Assistant Administrator to determine whether an EIS will be required under NEPA;

(ii) copies of all necessary major Federal permit or license approvals;

(iii) a Preliminary Engineering Report.

(2) A showing that the state has complied with the requirements of the Project Notification and Review System established by Office of Management and Budget Circular A-95 (Part I) or a showing, if the application for assistance has not been submitted to the PNRS, that a memorandum of agreement for coordinating planning under Section 308 has been established with appropriate areawide clearinghouses in the state's coastal zone, pursuant to Part IV, Attachment A, of OMB Circular A-95.

(3) A certification by the state agency designated under § 931.25(a)(4)(i) that the assistance for the purposes specified in § 931.34(a)(1) and (3) has been or will be allocated within the State in accord with the intrastate allocation process described in Subpart J of this part.

(4) A certification by the state agency designated under § 931.25(a)(4)(iii) that the assistance will be used in a manner that is compatible with the state's developing, or consistent with the state's approved, coastal zone management program.

(c) Allotted funds not applied for by the end of the fiscal year for which allotments were made may be reallocated by the Assistant Administrator among other eligible states.

§ 931.37 Limitations on Expenditures.

(a) Section 308(c) funds expended by a state for the purposes described in § 931.34 may not exceed 70 percent of the actual cost of carrying out projects;

(b) States and local governments may use in-kind contributions as the non-federal matching share in accordance with OMB Circular A-102;

(c) Section 308(c) funds may not be used:

(1) For the prevention, reduction, or mitigation of any loss of an environmental or recreational resource that is directly attributable to the sale, lease, or rental of such resource by a state agency or unit of local government

when the sale, lease, or rental occurs after October 17, 1980;

(2) To pay for that part of a project designed to prevent, reduce, or mitigate the loss of a valuable environmental or recreational resource which is incommensurate with the value of the loss or which can be paid for with funds readily available from any other Federal program;

(3) To pay for that part of a loss:

(i) That occurs after July 26, 1976, and

(ii) That could have been prevented by a reasonable exercise of a state's existing regulatory authority.

(4) For architectural, engineering, and other technical service fees or costs unless:

(i) Compensation is comparable to the cost of similar work awarded through open competitive bidding;

(ii) Compensation is not based on a cost plus a percentage-of-cost; and

(iii) Design and performance standards conform to professionally recognized national standards.

(5) The purchase of movable construction related equipment such as dump trucks and excavating equipment unless expressly authorized by the financial assistance award.

(d) All awards and expenditures of funds under this subpart are subject to the applicable requirements specified in Subpart I.

2. By amending Subpart G as follows:

a. § 931.70 is revised to read as follows:

§ 931.70 General.

This Subpart states the objectives of financial assistance under section 308(b) and describes its allowable uses. It also describes procedures for applying for Section 308(b) grants.

b. In § 931.71 revise the introductory text to read:

§ 931.71 [Amended]

The objectives for providing assistance under section 308(b) are:

* * * * *

c. In § 931.71 add the following paragraph (d):

* * * * *

(d) To help coastal States and units of local government plan for the provision of public facilities and public services required as a result of OCS energy activity.

§ 931.73 [Amended]

d. In § 931.73 the first sentence of paragraph (a) is amended by removing the words "Sections 308(b)(5)(c) and (308)(d)(4)" and inserting in their place the words "Section 308(b)."

§ 931.74 [Amended]

e. In § 931.74 the first sentence of first paragraph (a) is amended by removing the words "Sections 308(b)(5)(c) and 308(b)(4)" and inserting in their place the words "Section 308(b)(5)(c)".

f. In § 931.74 add the following paragraph (d):

(d) Allowable uses under Section 308(b)(5)(B) include:

(1) Planning and study that are necessary to provide new or improved public services that are required as a result of OCS energy activity.

(2) Paying for reasonable costs of administering the provision of assistance under Section 308 to the extent that funding for these administrative costs is not available under section 308(c).

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 17

Gross Collection of Exchange-Set Margins

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is adopting new Rule 1.58 which requires that carrying FCMs collect margin for positions carried in omnibus accounts on a gross basis and at a level which is no less than that established for customer accounts by the rules of the applicable market. The Commission is adopting such a rule in order to help to prevent, or at least limit, financial loss to customers, members of the marketplace and the marketplace itself which may be caused by the bankruptcy or insolvency of a futures commission merchant ("FCM") which is not a clearing member of a commodity exchange. The new rule will require the transfer of certain funds now controlled by an originating FCM to the generally better-capitalized clearing FCM, and it will strengthen the financial early warning system by providing carrying FCMs with greater information about the financial condition of those FCMs for which they are carrying omnibus accounts.

EFFECTIVE DATE: August 16, 1982.

FOR FURTHER INFORMATION CONTACT: Daniel A. Driscoll, Deputy Director, Division of Trading and Markets, Commodity Futures Trading

Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 29, 1981, the Commission published a proposed new Rule 1.58 which would require that carrying FCMs collect margin for positions carried in omnibus accounts on a gross basis and at a level which is no less than that established for customer accounts by the rules of the applicable contract market, as well as proposed amendments to Rule 17.04 regarding reporting of omnibus account positions, and solicited public comment thereon (46 FR 62864). The Commission received twelve written comments on the proposals. The commentators include eight FCMs and two commodity exchanges, one of which submitted two comment letters, as well as the National Futures Association ("NFA"). The Commission has carefully considered all of the comments received in response to the proposed rules.

II. Discussion

As the Commission stated in the Federal Register release announcing the proposal of Rule 1.58, the Commission believes that gross collection of exchange-set margins will strengthen the industry and enhance customer protection by moving segregated funds into the normally better-capitalized hands of a clearing member. The Commission recognizes the key role of the clearing members in assuring financial integrity and correcting potential problems.

As the Commission also stated in the Federal Register release announcing the proposal of Rule 1.58, the most significant difference in the financial monitoring program of the exchanges and the Commission's financial monitoring program is the information that the exchanges have about clearing members which the Commission does not have about non-clearing FCMs which carry their accounts with a clearing member FCM on an omnibus basis.¹ Such information is primarily developed from the pay and collect information that is generated by the individual clearing organizations. While the Commission could conceivably obtain such information directly from all originating FCMs, such a process would be cumbersome and would not involve an independent source such as a

carrying FCM or clearing organization. In addition to the information available to the exchanges about their clearing members through the pay and collect data, there is an informal information network existing among the FCM community. While such information is often communicated to exchange personnel, it rarely, if ever, reaches the Commission. To compensate for the information which is routinely obtained by the exchanges about their clearing member FCMs but which is not readily available to the Commission or in certain instances, any self-regulatory organization with respect to omnibus accounts, the Commission has determined to adopt a rule which will require the gross collection of exchange-set margins. In this regard, pay and collect information is unavailable even to the exchanges regarding omnibus accounts where the originating FCM is a member of one exchange placing orders for execution on another exchange where the FCM is not a member. Rule 1.58 will thus apply to all omnibus accounts and not only to those omnibus accounts of originating FCMs which are not members of any commodity exchange, as some commentators suggested.

One concern expressed by some commentators related to the investment of customer funds. The Commission stated in the Federal Register release announcing the proposal of Rule 1.58 that, if the rule were adopted, an originating FCM would not be precluded from depositing United States Treasury bills or some other acceptable form of interest-bearing instrument with the carrying FCM and would not, therefore, have to forego the interest currently being earned on segregated funds. One commentator stated that Treasury bills or other interest-bearing instruments would be acceptable to a clearing FCM for initial margin purposes. That commentator further stated, however, that since daily settlement obligations or variation margin payments owed by a clearing member to a clearing organization must be satisfied on a cash basis, a clearing member would not accept Treasury bills or other interest-bearing instruments from originating FCMs for any purpose. The Commission disagrees with that statement. The amount of variation margin required of a clearing FCM by a clearing organization should be the same whether the collection of margin with respect to positions held in omnibus accounts carried by the clearing FCM is made on a net or gross basis, and changing from one system to the other should have no bearing upon variation margin payments

¹ While the NFA is expected to develop a financial monitoring program for FCMs, it is anticipated that the NFA will encounter many of the same problems in obtaining information that the Commission has experienced.